

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

UNITED STATES OF AMERICA

CRIMINAL NO. 05-CR-60047

VS.

JUDGE DOHERTY

MICKEY M. PATT

MAGISTRATE JUDGE HANNA

MEMORANDUM JUDGMENT

Mickey M. Patt was convicted of being a felon in possession of a firearm on May 18, 2007. He was sentenced to serve 115 months imprisonment. His conviction and sentence were affirmed by the United States Fifth Circuit Court of Appeals on December 15, 2008. *United States v. Patt*, 305 Fed. Appx. 218 (5th Cir. 2008).

On August 20, 2009 he filed a Motion for Transcripts [Doc. 150], and, on September 17, 2009, United States Magistrate Judge Mildred E. Methvin denied the motion without prejudice to Patt's right to re-urge his motion should he thereafter file a Motion to Vacate Judgment. Patt was further advised that any subsequent Motion for Transcripts should set forth the basis for the motion and include a showing that the grounds for the relief are not frivolous but present a substantial question. [Doc. 152]

On November 2, 2009 he sent a letter requesting various documents and transcripts. His request was construed to be a second Motion for Transcripts. [Doc. 153] On December 1, 2009 he filed a Motion to Vacate pursuant to 28 U.S.C. §2255 raising three claims for relief:

(1) ineffective assistance of counsel based on counsel's failure to investigate; (2) ineffective assistance of counsel based on cumulative errors – failing to subpoena witnesses, failing to “familiarize” himself with the case, and failing to seek dismissal on the grounds of insufficiency

of the evidence; and (3) actual conflict of interest. [Doc. 155]

On January 14, 2010 the undersigned denied Patt's motion for transcripts noting, "... his request for transcripts is again conclusory and does not comply with the court's order. He makes no showing that his petition presents a substantial question and that the transcripts requested are necessary for the issues presented to be decided but states only that he 'can not adequately prepare or conduct any motions properly without this information.'" Patt was again authorized to re-urge the motion and he was again directed to set forth the basis for the motion, including a showing that the grounds for relief are not frivolous but present a substantial question. He was also directed to explain why the transcripts are necessary. [Doc. 160]

On February 16, 2010 Patt filed the instant Motion alleging the following grounds in support, "Petitioner displays for points of error incorporated inside a §2255 Petition where he was blatantly denied a fair trial, and these points of error are displayed without scouring the reproduced record Petitioner so desperately seeks..." and, "A miscarriage of justice occurred at the trial level and petitioner can make a prima facie showing and desperately trying not to be redundant petitioner has shown without all pertinent transcripts how counsel's 'egregious' errors deprived him of the Constitutional protections accorded under the 6th Amendment." [Doc. 162]

Law, Analysis, and Order

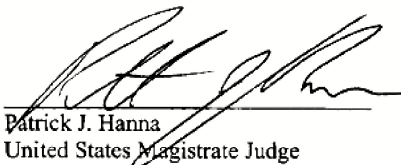
To obtain a transcript at government expense, the litigant must satisfy 28 U.S.C. § 753(f). See *Harvey v. Andrist*, 754 F.2d 569, 571 (5th Cir.1985). Section 753(f) "provides for a free transcript for indigent prisoners asserting a claim under § 2255 if a judge certifies that the asserted claim is not frivolous and that the transcript is needed to decide the issue." *United States v. MacCollom*, 426 U.S. 317, 320-21 (1976) (internal quotation marks omitted). The

movant must “bring to [the court’s] attention any facts that might require a close examination of the trial transcript.” *Harvey*, 754 F.2d at 571.

Patt has not shown why the transcripts are necessary to the resolution of the pending Motion to Vacate nor has he brought to the court’s attention, any facts that might require a close examination of the transcripts, therefore,

The Motion filed February 16, 2010 seeking production of transcripts [Doc. 162] is
DENIED.

In Chambers, Lafayette, Louisiana April 6, 2010.



Patrick J. Hanna
United States Magistrate Judge
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